MONTANA LEGISLATIVE HISTORY

Chapter 189 19 75

Bill H _____ S 56 Original bill & history ____C

H. Committee on Labor + Employment Relations			S. Committee on Labor + Employment Relations		
Hearing Date(s)	Mar 07	✓ C	Hearing Date(s)	Jan 17	✓ C
	_____	____C		_____	____C
	_____	____C		_____	____C
	_____	____C		_____	____C
Date Out	Mar 07	✓ C		Jan 17	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

LC 0060

Senate BILL NO. 56

INTRODUCED BY Himel, Flynn, Goodman, Mathers, Olson, H. Smith, Thiessen

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE PAYMENT OF A WORKMEN'S COMPENSATION CLAIMANT'S ATTORNEY AND WITNESS FEES IN CERTAIN CASES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Payment by employer or insurer of fees for claimant's legal services and witnesses. (1) If an employer or insurer pays or tenders payment of compensation under Title 92, but controversy relates to the amount of compensation due, and the settlement or award is greater than the amount paid or tendered by the employer or insurer, a reasonable attorney's fee as established by the division or the workmen's compensation judge if the case has gone to a hearing, based solely upon the difference between the amount settled for or awarded and the amount tendered or paid, may be awarded in addition to the amount of compensation.

(2) When an attorney's fee is awarded against an employer or insurer under this section there may be further assessed against the employer or insurer reasonable costs, fees, and mileage for necessary witnesses attending a hearing on the claimant's behalf. Both the necessity for the witness and the reasonableness of the fees must be approved by the division or the workmen's compensation judge.

-End-

INTRODUCED BILL

SB56

MINUTES OF THE MEETING
LABOR AND EMPLOYMENT RELATIONS COMMITTEE
MONTANA STATE SENATE

January 17, 1975

The second meeting of the Labor and Employment Relations committee was called to order by Chairman Lee on the above date in room 402 of the State Capitol Building at 9:30 a.m.

ROLL CALL: All members were present.

CONSIDERATION OF SENATE BILL NO. 56: Senator Himsl author of SB 56 appeared before the committee in support of his bill. (A copy of his testimony is attached.)

Jim Murray, of the AFL-CIO, appeared in support of SB 56. He opened his testimony by thanking the Special Interim Committee for the work they had done. He supports the idea that the attorney fees should be paid by the carrier. All workmens compensation settlements should be free and clear. Another point he brought out was that insurance companies sometimes make offers lower than orginial claims and that this legislation would discourage that, for a carrier is encouraged to make a fair offer in the beginning.

William Romine, attorney, appeared in support of SB 56 but feels there is a misconception in the bill. In workmens compensation, where there is a controversy the insurer does not come in and tender a certain amount of dollars. For example, if a carrier offers $3,000 and the claimant feels he is entitled to $6,000, the carrier is held to $3,000. Mr. Romine feels this bill could be modified so if offer is made by the carrier, it is a firm offer and the hearing examiner can not award less than that.

George Wood, Executive Secretary of the Montana Self-Insurers Association, appeared in opposition to SB 56. (A copy of his testimony is attached)

In closing Senator Himsl said the figures he listed come from the Legislative Audit Report of 1974. He pointed out that out of 173 workmens compensation cases 20 were plan 1, which is self insured, 110 were plan 2 which is private carriers, and 43 were plan 3 which are state insurance plans.

Committee then held discussion on the bill.

CONSIDERATION OF SENATE BILL NO. 59: Senator Graham author of SB 59 appeared before the committee in support of his bill. Senator Graham was the chairman of the interim study which looked at these bills. This study was held to discover why abuses to the bills come about and to set up a set of bills which will correct these deficiencies. Senator Graham thought it was necessary to change the law so that when something occured or an award was made the claimant would be notified. This was important so that the claimant knew what was going on. The problem sometimes arises when the claimant gives "power of attorney" to his lawyer and then the attorney does not inform his client of what took place. This bill is a necessary step to keep claimants informed of their settlements.

Jim Murray, of the AFL-CIO, said they endorsed SB 59 and asked for passage.

George Wood, Executive Secretary of the Montana Self-Insurers Association, stated he was in support of the bill.

Norman Grossfield, Director of Workmens Compensation, appeared in support of SB 59. He said it is a necessary change for a claimant is entitled to know exactly what is going on. Mr. Grossfield said that in time to come a claimant may not have the same attorney. Therefore, the claimant should have a record of the settlement or compromise so if in the future he wishes to reopen the case he would know what had taken place before.

The committe then held discussion on the bill. During this discussion Chairman Lee asked if this notification also took in the denial of a settlement. Graham said that all information would go to the claimant even if it had been refused. Mr. Grossfield also replied on the question by saying that the bill says approving and technically does not cover denial.

CONSIDERATION OF SENATE BILL NO. 57: Senator Himsl author of SB 57 testified in opposition of the bill. (A copy of his testimony is attached.)

Jim Murray, of the AFL-CIO, supports the concept and feels there is a need to implement in the division rules, a review commission to make recommendations to the commission on attorney fees. It would provide the claimant with a place to take their grievances. Mr. Murray thought that Section 1, subsection (1), line 13, the word "affidavit" was not suitable and that the words "contract of employment" would be more suitable.

George Wood, of the Montana Self-Insurers Association, rose in support of SB 57 and agreed with Jim Murray that trouble could arise from the word "affidavit", and with this change would be in agreement with the bill.

Mr. Grossfield, of Workmens Compensation, in support of the bill stated that all states have a similar bill.

Mr. Romine, attorney, appeared in opposition to the bill. (A copy of his testimony is attached.)

Discussion was then held by the committee on the bill.

DISPOSTION OF SENATE BILL NO. 56:
Senator Blaylock moved SB 56 DO PASS. The motion carried unanimously, with Senator Etchart excused.

DISPOSITION OF SENATE BILL NO. 59:
Senator Hazelbaker moved that SB 59 DO PASS. Senator Norman made a substitute motion to amend page 2, section 1, line 5, after the word "approving" insert the words "or denying". Motion carried unanimously with Senator Etchart excused. Senator Blaylock moved that SB 59 DO PASS AS AMENDED. Motion carried unanimously with Senator Etchart excused.

My name is George Wood, Executive Secretary of the Montana Self-Insurers Association and I arise in opposition to Senate Bill 56.

This is another penalty provision law aimed at the employer.

I call this committees attention to Section 92-616, which provides that in the event of denial or termination of compensation of a claim later adjudged compensable, the employer or insurer shall pay reasonable costs and attorney's fees as established by the Division. Under this section, a company I represent was assessed attorney's fees and costs in a case where no decision could be made prior to hearing because claimant's attorney directed that the attending physician not release the claimant's medical reports.

I call your attention to Section 92-824.1, which provides a 10% penalty if compensation payments have been unreasonably delayed or refused.

Senate Bill 56 is another penalty provision bill. It evidently applies only to cases where compensation has been paid or an offer of payment has been made. It provides that if controversy relates to the amount of compensation due and if the settlement or award is greater than the original tender, then Attorney's fees can be assessed based on the difference.

In order to make a compromise settlement of a claim, you must resolve a controversy. That controversy is the necessary legal requirement of a compromise settlement. This fact is part of a standard compromise petition.

In practice, settlements are negotiated. This occurs because of the many instances in which information known to one party becomes available to the other only during the course of negotiation.

Section 2 of the bill is already a matter of law in Section 92-616 and therefore unnecessary.

The result of enactment of this bill would be to delay settlements since insurers and employers would be reluctant to tender the first offer. In addition, pertinent medical information not available to the employer or insurer could change his position if received after the first tender. If withheld, it could cause the assessment of attorney's fees.

I feel that this bill is unnecessary; would create administration problems and lead to increased litigation.

I respectfully request that this committee report Senate Bill 56 DO NOT PASS.

BEFORE THE WORKMEN'S COMPENSATION DIVISION

Department of Labor and Industry
815 Front Street
Helena, Montana 59601

.....
Claimant

.....
Employer

.....
Defendant

PETITION FOR COMPROMISE SETTLEMENT

CASE .....

The undersigned claimant was accidentally injured on .....,

while employed by....., an employer enrolled under

Plan .....of the Workmen's Compensation Act. The Claim was filed and accepted for compensation and medical benefits.

The total compensation paid is $.....

The total medical and hospital benefits paid are $.....

A controversy exists between this claimant and defendant over the weekly amount and duration of compensation. This controversy has been resolved by an agreement between the claimant and defendant wherein the claimant agrees to accept the sum of.....

..... ($.....)

in a lump sum in final compromise settlement which represents compensation for.....weeks and that further medical and hospital benefits are expressly hereby released/reserved by the claimant.

The claimant hereby petitions the Administrator with the concurrence of the.....
Carrier — Employer

for approval of a final compromise settlement and that the case be fully and finally closed on the basis hereinabove stated.

Dated this ....., 19.....

Witness: .....
Claimant

.....

The..... hereby concurs with and joins in the foregoing petition for final compromise settlement.

Dated....., 19.....

.....

By .....

Note: All petitions must be accompanied by final medical reports clearly reciting the medical findings and disability.

Form 000-000

Senate Bill 56 Who pays attorney fees WCD cases

Senate Bill 56 is a recommendation of the special interim committee studying Workmen's Compensation problems.

The basic rule for compensation for legal representation is that each party pays his own lawyer---win or lose. Practice in Workmen's Compensation arrangements have changed this concept since the Workmen's Compensation coverage is in effect a no-fault insurance where the fact of injury is an admitted liability by the employer but the employer is not subject to further suit and the injured workman accepts the benefits awarded to him---or her!

If legal representation is sought by the injured workman (and in Montana about half of the claimants engaged an attorney in a 3 ½ year study of operations), over 3/4 of the states---42 at the last count---regulate attorney's fees in some way. The amount of the fee ranges from 10% of the award with $100. maximum in Wyoming (a monopoly insurance state) to 30% of the award with no maximum in Florida. A number of states having sliding scales. Most common fee reported in Montana is one-third of the award!

The situation where the injured workman has to employ legal services suggests that the system has not performed as it should since the purpose of the whole program is based on awarding the injured workman compensation---not a system to compensate lawyers at the expense of the workman's benefits.

However, Workman's Compensation cases may be complex and legal representation may be necessary and in such cases the lawyers should be paid for his services.

Senate Bill 56 therefore does not set legal fees---recognizing that each case where legal help is indicated is different, that some

(more)

STANDING COMMITTEE REPORT

January 17, 19 75

MR. PRESIDENT

We, your committee on Labor and Employment Relations

having had under consideration Senate Bill No. 56

Respectfully report as follows: That Senate Bill No. 56

DO PASS

Senator Robert E. Lee, Chairman.

STATE PUB. CO.
Helena, Mont.

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date 1-17-73 SENATE Bill No. SB 56 Time

NAME	YES	NO
Senator Robert Lee, Chairman	✓	
Senator Richard Smith, Vice Chairman	✓	
Senator Chet Blaylock	✓	
Senator Mark Etchart EXCUSED		
Senator Frank Hazelbaker	✓	
Senator John Mehrens	✓	
Senator Bill Norman	✓	
Senator S. A. Olson	✓	

Mary Anne Choquette
Secretary

Robert E. Lee
Chairman

Motion: Senator Blaylock moved SB 56 DO PASS. Motion carried unanimously with Senator Etchart Excused.

(include enough information on motion--put with yellow copy of committee report.)

LABOR & EMPLOYMENT RELATIONS COMMITTEE

44th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 56 ✓	Provide payment of Workmen's Comp. claimant's attorney & witness fees.	1/23	Himsl Flynn	3/7	BE CONCURRED IN	3/7
SB 57 ✓	Provide disclosure the WCD of attorney fee arrangements and regulating attorney fees in these cases.	1/25	Himsl Flynn	3/7	BE CONCURRED IN	3/7
SB 59 ✓	Provide for direct notice of award to claimants in WCD cases.	1/25	Graham Himsl	1/31	BE CONCURRED IN	1/31
SB 3 ✓	Pertaining to apprenticing of minors are repealed.	1/28	Regan Greely	3/14	BE CONCURRED IN	3/14
SB 82 ✓	Relate to medical benefits under WCD, add a provision requiring employer or insurer to replace damage or lost eyeglasses & dentures.	1/28	Norman Hazelbaker	3/5	BE CONCURRED IN	3/5
SB 88 ✓	WCD, remove limitations on medical benefits so it complies fully w/report of national commision of WCD.	1/29	Hazelbaker	3/12	BE CONCURRED IN	3/12

MINUTES OF THE MEETING
LABOR & EMPLOYMENT RELATIONS
HOUSE OF REPRESENTATIVES
March 7, 1975

A meeting of the Labor & Employment Relations Committee was held on Friday, on the above date, at 10:30 a.m. in Room 428A of the Capitol Building, with Chairman Kimble presiding. Representatives Johnson and Ellis were excused with all other members present.

The following bills were heard in this order: SB 57
SB 56

SB 57--SPONSOR: Matt Himsl, district 9, said this bill was recommended by the interim committee on Workmen's Compensation, which states that when an attorney represents a claimant under WCD, he shall submit to the division a contract of employment stating the terms of the fee arrangements. The fee is negotiable, based on the time involved, and the complexity of the case. This would settle arrangement disputes and protect the claimant and the attorney. Norm Grosfield, administrator, WCD, said that he worked on the interim committee last year, and the the bill was held over for a select committee review. They have no objections from the attorneys (exhibit I).

SB 56--SPONSOR: Matt Himsl, district 9, said this was also recommended by the interim committee, which deals with the payment of attorney fees. The basic rule now is that each party pays his own lawyer, win or lose. Under this bill, the fee for Workmen's Comp. cases, would be based on the difference between the carried offered and the final award. By doing this the injured worker would not be a victim of any failure of the system (exhibit II). Jim Murry, AFL-CIO, submitted exhibit III in support of both bills.

There being no further testimony, the committtee went into executive discussion.

SB 57--BABCOCK MOVED SB 57 BE CONCURRED IN, SECONDED BY ELLERD. MOTION CARRIED UNANIMOUSLY.

SB 56--Babcock asked if the award determined what the attorney fees would be, and Himsl replied yes, and that this bill would give the WCD the position to evaluate the attorney costs and their latitude.

GUTHRIE MOVED SB 56 BE CONCURRED IN, SECONDED BY GILLIGAN. MOTION CARRIED UNANIMOUSLY.

There being no further business, the meeting was adjourned to reconvene March 10, 1975 at 10:30 a.m.

GARY N. KIMBLE, Chairman

Gloria Wong, Secretary

Exhibit 11
3-7-75

Hinsl

Senate Bill 56 Who pays attorney fees WCD cases

Senate Bill 56 is a recommendation of the special interim committee studying Workmen's Compensation problems.

The basic rule for compensation for legal representation is that each party pays his own lawyer---win or lose. Practice in Workmen's Compensation arrangements have changed this concept since the Workmen's Compensation coverage is in effect a no-fault insurance where the fact of injury is an admitted liability by the employer but the employer is not subject to further suit and the injured workman accepts the benefits awarded to him---or her!

If legal representation is sought by the injured workman (and in Montana about half of the claimants engaged an attorney in a 3 ½ year study of operations), over 3/4 of the states---42 at the last count---regulate attorney's fees in some way. The amount of the fee ranges from 10% of the award with $100. maximum in Wyoming (a monopoly insurance state) to 30% of the award with no maximum in Florida. A number of states having sliding scales. Most common fee reported in Montana is one-third of the award!

The situation where the injured workman has to employ legal services suggests that the system has not performed as it should since the purpose of the whole program is based on awarding the injured workman compensation---not a system to compensate lawyers at the expense of the workman's benefits.

However, Workman's Compensation cases may be complex and legal representation may be necessary and in such cases the lawyers should be paid for his services.

Senate Bill 56 therefore does not set legal fees---recognizing that each case where legal help is indicated is different, that some

(more)

lawyers specialize in this type of work and have an expertise commanding higher fees---and the claimant is entitled to the best he can get!

Senate Bill 56 has several objectives. The legal fee would be based on the difference between the ~~original~~ earlier offer and the final award made! The lawyer would be paid on that portion of the award he has won for the claimant. If the ~~original~~ earlier offer was for $6,000. and through a work-up and appeal, the lawyer secured an award of $12,000, his fee would be on the $6,000. difference. If at a one-third rate, the lawyer would received $2,000. instead of $4,000.

Further, the attorney fees would be paid by the insurance carrier, the injured workman, in the example cited, would receive the full $12,000.---a monetary compensation for his injury.

Senate Bill 56 suggests, insurance carriers would be encouraged to make realistic offers in the first place. Lawyers would take only cases in which there were good prospects for increasing the award---and if they took the case would really work on it---in any event, the injured workman would not be the victim of any failures in the system.

Montana is not really pioneering in this approach---16 states furnish legal service or require the insurance carriers to pay the fees incurred at a hearing level. Michigan offers assistance up to litigation of a claim, Minn. offers assistance, in New Jersy fees are paid by the insurer, Florida, insurer pays if a contested claim is successful.

I believe your acceptance of Senate Bill 56 would be a major step in improving the delivery service of workman's compensation benefits to the claimants, would eliminate testing offers by the carriers, and lawyers---if necessary, would be rewarded for their contribution to the settlement.

I respectfully urge your favorable consideration of SB 56.

Exhibit III
3-7-75

MONTANA STATE AFL-CIO
APRIL 29 1936

Box 1176, Helena, Montana
zip code 59601

JAMES W. MURRY
Executive Secretary

LUNDY SHOPPING CENTER
MISSOULA HIGHWAY

March 7, 1975

Honorable Gary Niles Kimble, Chairman
House Labor Committee
State Capitol
Helena, Montana 59601

Dear Representative Kimble:

The Montana State AFL-CIO, through an unavoidable conflict, is unable to appear today to testify on Senate Bills 56 and 57 which the committee has under consideration. Instead, we request that this letter be read and made part of the committee's record.

The two bills to be heard this morning are truly significant pieces of legislation that add a vital element of control, whose absence in the present law contributed to many of the abuses within the Workmen's Compensation Division.

We support fully both Senate Bill 56, which provides for determination and payment of attorney and witness fees in certain cases, and Senate Bill 57 providing for disclosure and regulation of attorney's fees.

The Interim Legislative Committee that produced these two measures is to be commended for their diligence and their attention to the matter of attorney fees and protection for those who need assistance in controverted claims.

These bills afford injured workers a bit more protection than they have had. For that reason we wholeheartedly ask that the committee approve Senate Bills 56 and 57 and recommend their enactment by the entire House of Representatives.

Sincerely,

Jim Murry

James W. Murry, Executive Secretary
Montana State AFL-CIO

JWM:js

cc: All Members of the House Labor Committee

PRINTED ON UNION MADE PAPER

44th LEGISLATIVE SESSION

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
SB 3	1/7/75		1/8/75	Referred to Judiciary					
SB 50	1/10/75	1/20,1/31 2/7,2/10,2/24		Held in Committee					
SB 56	1/11/75	1/17/75	1/17/75	1/17/75					
SB 57	1/11/75	1/17/75	1/17/75			1/17/75			
SB 59	1/11/75	1/17/75	1/17/75			1/17/75			
SB 82	1/16/75	1/20/75	1/20/75			1/20/75			
SB 88	1/16/75	1/22/75	1/22/75	1/22/75					
SB 99	1/17/75	1/22/75	1/22/75	1/22/75					
SB 107	1/17/75	1/22/75	1/22/75	1/22/75					
SB 114	1/17/75	1/22/75	1/22/75	1/22/75					
SB 119	1/18/75	1/22/75	1/22/75	1/22/75					
SB 129	1/20/75	1/29/75	1/29/75			1/29/75			
SB 187	1/23/75	1/29/75	1/29/75		1/29/75				
SB 259	2/17/75	2/19/75	2/19/75	Held in Committee					
SB 265	2/18/75	2/24/75	2/24/75			2/24/75			
SB 385	2/6/75	2/12/75	2/14/75			2/14/75			
SB 392	2/7/75	2/14/75	2/14/75			2/14/75			

(Use Separate Sheet for Senate, House Bills, and Resolutions)

SENATE BILL NO. 56

INTRODUCED BY HIMSL, FLYNN, GRAHAM, MATHERS, OLSON, R. SMITH, THIESSEN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE PAYMENT OF A WORKMEN'S COMPENSATION CLAIMANT'S ATTORNEY AND WITNESS FEES IN CERTAIN CASES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Payment by employer or insurer of fees for claimant's legal services and witnesses. (1) If an employer or insurer pays or tenders payment of compensation under Title 92, but controversy relates to the amount of compensation due, and the settlement or award is greater than the amount paid or tendered by the employer or insurer, a reasonable attorney's fee as established by the division or the workmen's compensation judge if the case has gone to a hearing, based solely upon the difference between the amount settled for or awarded and the amount tendered or paid, may be awarded in addition to the amount of compensation.

(2) When an attorney's fee is awarded against an employer or insurer under this section there may be further assessed against the employer or insurer reasonable costs, fees, and mileage for necessary witnesses attending a

REFERENCE BILL

hearing on the claimant's behalf. Both the necessity for the witness and the reasonableness of the fees must be approved by the division or the workmen's compensation judge.

-End-